

UNITED STATES OF AMERICA
UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

MENDELL DONNY FRITZ,

Petitioner,

Case No. 2:10-cv-102

v.

Honorable R. Allan Edgar

GARY CAPELLO,

Respondent.

**ORDER ADOPTING AND APPROVING
MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION**

On April 26, 2013, U.S. Magistrate Judge Greeley entered a Report and Recommendation ("R&R") recommending that Petitioner's habeas petition be dismissed with prejudice. Doc. No. 40. Petitioner has filed objections to the R&R. Doc. No. 41. This Court is required to make a de novo determination of those portions of the R&R to which objections have been filed, and may accept, reject, or modify any or all of the Magistrate Judge's findings or recommendations. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b).

After reviewing the record de novo, the Court concludes that the objections are without merit. Petitioner's objections to the R&R [Doc. No. 41] are DENIED. Magistrate Judge Greeley's R&R [Doc. No. 40] is APPROVED and ADOPTED as the opinion of the Court pursuant to 28 U.S.C. § 636(b)(1) and W.D. Mich. L. Civ. R. 72.3(b). Petitioner's motion for an evidentiary hearing [Doc. No.38] is DENIED. The petition for writ of habeas corpus brought pursuant to 28 U.S.C. § 2254 is DENIED and DISMISSED WITH PREJUDICE.

If Petitioner files a notice of appeal, it will be treated as an application for a certificate of appealability which shall be DENIED pursuant to 28 U.S.C. § 2253(c)(2); Fed. R. App. P. 22(b)(1); and *Slack*, 529 U.S. at 484. Reasonable jurists could not find that this decision to dismiss Petitioner's claims is debatable or wrong.

A Judgment consistent with this Memorandum and Order will be entered.

SO ORDERED.

Dated: 8/26/2013

/s/ R. Allan Edgar
R. Allan Edgar
United States District Judge